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11  
12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 UNITED STATES OF AMERICA,  
15  
16 Plaintiff,

17 v.

18 JOSE SUSUMO AZANO MATSURA,  
19 RAVNEET SINGH,  
20 ELECTIONMALL, INC., AND  
MARCO POLO CORTÉS,  
21 Defendants.

Case No.: 14CR0388-MMA

**RAVNEET SINGH'S  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT OF MOTION TO  
DISMISS SUPERSEDING  
INDICTMENT FOR FAILURE  
TO ALLEGE AN OFFENSE**

Date: July 10, 2015  
Time: 1:30 p.m.  
Ctrm: 3A  
Judge: Hon. Michael M. Anello

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1 Ravneet Singh (“Singh”) respectfully submits this brief in support of his motion  
 2 to dismiss the Government’s Superseding Indictment (“Indictment”). For the reasons  
 3 that follow, all Counts of the Indictment as to Singh, specifically Counts 1, 3, 19, 24  
 4 and 25, should be dismissed.

# 5 **I. INTRODUCTION**

6 The Government charged Singh in a twenty-six-count Indictment. Only 5  
 7 charges relate to Singh. They allege:

8 Count 1 – a conspiracy, in violation of 18 U.S.C. § 371, to commit the  
 9 offenses outlined in Counts 3, 19 and 24 below;

10 Count 3 – donations and contributions by a foreign national in violation  
 of 2 U.S.C. §§ 437g(d)(1)(A) and 441e(a)(1)(A);

11 Counts 19 and 24 – destruction, alteration, or falsification of records, in  
 12 violation of 18 U.S.C. § 1519; and

13 Count 25 – bribery of a public official in violation of 18 U.S.C. § 201(b).

14 Throughout the Government’s 19-page Indictment, it fails to allege any  
 15 unlawful conduct by Singh. Each Count either fails to allege the facts necessary to  
 16 satisfy the elements of the charged offense, or the specific facts alleged fall beyond  
 17 the scope of the criminal statutes at issue. Specifically, Counts 1, 3, 19 and 24 are  
 18 premised on the allegation that Singh knowingly and willfully conspired to assist a  
 19 foreign national in making undisclosed campaign contributions. These Counts must  
 20 be dismissed because the Government failed to allege that Singh: (1) knew that  
 21 Defendant Jose Susumo Azano Matsura (“Azano”) was a foreign national; (2) knew of  
 22 his legal duty; and (3) knowingly and actively concealed or falsified documents.  
 23 Count 25 must be dismissed because the Indictment only states a conclusion of law.

24 ///

25 ///

26 ///

27 ///

## 1    **II.    BACKGROUND**<sup>1</sup>

2            Singh was the President of ElectionMall, Inc. (“ElectionMall”) and at all times  
 3    worked on its behalf and for its benefit. *See* Indictment at ¶ 6. ElectionMall  
 4    specialized in providing social media services to political campaigns throughout the  
 5    world. *See id.* Azano was a “foreign national” under Title 2 of the United States  
 6    Code and therefore was prohibited from making donations and contributions to  
 7    political candidates at the federal, state, or local levels. *See id.* at ¶ 4. Singh allegedly  
 8    would provide social media services through his company, ElectionMall, to the  
 9    candidates that Azano supported. *See id.* at ¶ 21h. Azano allegedly would then fund  
 10   ElectionMall for the cost of these social media services. *See id.* at ¶ 21i.

11           Despite these allegations, the Government never alleges that Singh knew of  
 12   Azano’s status as a foreign national nor of any legal duty associated with campaign  
 13   contributions. The Government’s failure to provide these allegations in the Indictment  
 14   are fatal and the Court must dismiss all charges against Singh.

## 15    **III.    LEGAL STANDARD**

16           Rule 12(b) of the Federal Rules of Criminal Procedure permits pretrial motions  
 17   on “any defense, objection, or request that the court can determine without a trial on  
 18   the merits.” Fed. R. Crim. P. 12(b)(1). “On a motion to dismiss an indictment for  
 19   failure to state an offense, the court must accept the truth of the allegations in the  
 20   indictment in analyzing whether a cognizable offense has been charged.” *United*  
 21   *States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002). “The indictment either states an  
 22   offense or it doesn’t.” *Id.*

23           “An indictment is sufficient if it (1) contains the elements of the offense  
 24   charged and fairly informs a defendant of the charge against which he must defend  
 25   and (2) enables him to plead an acquittal or conviction in bar of future prosecutions  
 26

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27    <sup>1</sup> For purposes of this motion only, Singh accepts the Indictment’s factual allegations  
 28    as true.

for the same offense.” *United States v. Lazarenko*, 564 F.3d 1026, 1033 (9th Cir. 2009) (citation and internal quotations omitted); *see also* Fed. R. Crim. P. 7(c) (“The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.”). “An indictment is fatally insufficient when an essential element ‘of substance’ is omitted, rather than one ‘of form’ only.” *United States v. Mallen*, 843 F.2d 1096, 1102 (8th Cir. 1988). The indictment must state the specifics and descend to particulars. *Russell v. United States*, 369 U.S. 749, 765 (1962). An indictment may not merely allege a conclusion of law; rather, an indictment must set forth the acts and intents that constitute the alleged crime with reasonable particularity of time, place, and circumstances. *United States v. Schneiderman*, 102 F.Supp. 87, 91-92 (S.D. Cal. 1951) (noting that for an indictment to sufficiently allege an offense, it must “all material facts and circumstances embraced in the definition of the offense must be stated, or the indictment will be defective”) (citation omitted).

#### IV. ARGUMENT

##### A. The Court Must Dismiss Count 3 For Failure to State an Offense

Count 3 of the Indictment alleges that Singh “willfully did directly and indirectly make a contribution and donations of a foreign national aggregating \$25,000 and more during a calendar year in connection with federal and local elections” in violation of 2 U.S.C. §§ 437g(d)(1)(A) and 441e(a)(1)(A).<sup>2</sup> Indictment ¶ 27. Section 441e(a)(1)(A) states, in part:

It shall be unlawful for—

(1) a foreign national, directly or indirectly, to make—

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a

<sup>2</sup> Effective September 1, 2014, 2 U.S.C. §§ 437g and 441e were transferred to 52 U.S.C §§ 30109 and 30121, respectively. This brief cites 2 U.S.C. §§ 437g and 441e to conform with the Indictment, which was issued prior to the effective transfer date.



1 contribution or donation, in connection with a Federal, State,  
2 or local election;

3 (B) a contribution or donation to a committee of a political  
4 party; or

5 (C) an expenditure, independent expenditure, or  
6 disbursement for an electioneering communication (within  
7 the meaning of section 304(f)(3));

8 Section 437g(d)(1)(A) provides, in part:

9 (A) Any person who knowingly and willfully commits a violation of any  
10 provision of this Act which involves the making, receiving, or reporting  
11 of any contribution, donation, or expenditure—

12 (i) aggregating \$25,000 or more during a calendar year shall  
13 be fined under title 18, or imprisoned for not more than 5  
14 years, or both

15 This Count should be dismissed for two reasons.

16 1. **The Indictment Fails to Allege that Singh Knew of Azano's**  
17 **Status as a Foreign National**

18 To state a violation of Sections 437g(d)(1)(A) and 441e(a)(1)(A), an indictment  
19 must allege that a person “knowingly and willfully” made a contribution, donation, or  
20 expenditure by a “foreign national.” The mens rea requirement—“knowingly and  
21 willfully”—applies to each element of the substantive offense. Thus, for an  
22 indictment to sufficiently state an offense under these sections, it must allege that the  
23 defendant was knowing and willful *both* as to the fact of the contribution, donation or  
24 expenditure *and* that the originator of the funds was a “foreign national.” As the  
25 Indictment fails to allege that Singh knew of Azano’s status as a foreign national,  
26 Count 3 of the Indictment must be dismissed.

27 To act knowingly is to act voluntarily and purposely and not because of mistake  
28 or inadvertence. *See United States v. Whittemore*, 776 F.3d 1074, 1081 (9th Cir.  
2015); *see also Manual of Model Criminal Jury Instructions for the Ninth Circuit*  
§ 5.6 (2010) (“Knowingly—Defined”). To act “willfully” means something not  
expressed by “knowingly,” otherwise both would not be used conjunctively.

1 *Schneiderman*, 102 F.Supp. at 93 (citation omitted). Hence, to act “willfully means to  
 2 act not only with purpose, but also with the specific intent to violate the law, or at a  
 3 minimum with the reckless disregard as to whether or not the act is a violation of  
 4 law.” *Whittemore*, 776 F.3d at 1081-82.

5 Where a certain mens rea is required under a statute, that mens rea requirement  
 6 applies to each element constituting the offense. *See United States v. Lacy*, 119 F.3d  
 7 742, 747 (9th Cir. 1997) (“[A] scienter requirement is presumed to apply ‘to each of  
 8 the statutory elements which criminalize otherwise innocent conduct,’ even if this is  
 9 not the ‘most natural grammatical reading’ of the statutory language.”) (citation  
 10 omitted). In *Ignacio Carlos Flores-Figueroa v. United States*, 556 U.S. 646 (2009),  
 11 the Supreme Court explained the relationship between a mens rea term and the several  
 12 elements of the offense it modifies:

13 If a child knowingly takes a toy that belongs to his sibling, we assume  
 14 that the child not only knows that he is taking something, but that he also  
 15 knows that what he is taking is a toy *and* that the toy belongs to his  
 16 sibling. If we say that someone knowingly ate a sandwich with cheese,  
 17 we normally assume that the person knew both that he was eating a  
 18 sandwich and that it contained cheese. Or consider the Government’s  
 19 own example, “John knowingly discarded the homework of his sister.”  
 20 The Government rightly points out that this sentence “does not  
 21 necessarily” imply that John knew whom the homework belonged to.  
 22 But that is what the sentence, as *ordinarily* used, does imply.

23 *Id.* at 650-51 (emphasis in original).

24 Here, in order for Singh to have violated Sections 437g(d)(1)(A) and  
 25 441e(a)(1)(A), he must have known of Azano’s status as a foreign national. The  
 26 present charges are analogous to alien smuggling cases (8 U.S.C. § 1324) where the  
 27 Government must prove that the defendant knew that the alien who was transported  
 28 was illegally present in the United States. *See United States v. Hernandez-Guardado*,  
 228 F.3d 1017, 1022 (9th Cir. 2000). It is the alienage that makes the conduct illegal,  
 and failure to require proof of defendant’s knowledge of that culpable fact would  
 allow otherwise legal conduct to be punished. Here, the only factor that makes

1 Singh's alleged conduct illegal is the fact that Azano was a foreign national. Similar  
 2 to alien smuggling, the Government must demonstrate that Singh knew of Azano's  
 3 legal status.

4 The Indictment, however, fails to allege that fact. Although the Indictment  
 5 alleges that Azano *was* a foreign national, nowhere does it allege that Singh *knew* that  
 6 Azano was in fact a foreign national. The Indictment thus fails to allege that Singh  
 7 acted knowingly and willfully within the purview of Sections 437g(d)(1)(A) and  
 8 441e(a)(1)(A). For this reason, Count 3 must be dismissed.

9 **2. The Indictment Fails to Allege that Singh Knew of his Legal**  
 10 **Duty under Section 441e(a)(1)(A)**

11 The Indictment also fails to allege that Singh knew of the prohibition against  
 12 campaign contributions by foreign nationals. As the court noted in *Bluman v. Federal*  
 13 *Election Commission*, “we caution the government that seeking criminal penalties for  
 14 violations of [§ 441e] – which requires that the defendant act ‘willfully,’ *see* 2 U.S.C.  
 15 §§ 437g(a)(5)(C), 437g(d)(1)(A) – will require proof of the defendant’s knowledge of  
 16 the law.” 800 F.Supp.2d 281, 292 (D.D.C. 2011), *aff’d*, 132 S. Ct. 1087 (2012)  
 17 (citations omitted); *see also United States v. Easterday*, 564 F.3d 1004, 1006 (9th Cir.  
 18 2008) (noting that for the crime of failure to pay employee payroll taxes, “willful” is  
 19 defined as “a voluntary, intentional violation of a known legal duty”); *United States v.*  
 20 *Awad*, 551 F.3d 930, 939 (9th Cir. 2009) (noting that a “willful” act is one undertaken  
 21 with a “bad purpose” with knowledge that the conduct was unlawful). Thus, whether  
 22 Singh acted with “knowledge of the law” is vital to the integrity of the charge.

23 Here, the Indictment fails to allege that Singh knew of his legal duty under  
 24 Sections 437g(d)(1)(A) and 441e(a)(1)(A), and acted intentionally in contradiction to  
 25 that duty. The only factual allegation in the Indictment that could possibly support the  
 26 proposition that Singh acted willfully in violation of a known legal duty is presented  
 27 by way of a cryptic e-mail that demands the drawing of multiple unreasonable  
 28

1 inferences in order to be construed as evidencing the requisite knowledge and intent.  
 2 The Indictment quotes from a June 13, 2012 e-mail in which Singh wrote, “I am not  
 3 responding to this email. Because of the legal ramifications. Please talk to me . . . in  
 4 person . . . .” Indictment at ¶22i. This vague email is simply not enough to show that  
 5 Singh had knowledge of the law and acted in contradiction to that duty.

6 The Indictment is missing key factual allegations, and the oblique reference to  
 7 “legal ramifications” contained in Singh’s June 13, 2012 email fails to fill that void.  
 8 “The omission cannot be supplied by intendment or implication, and the charge must  
 9 be made directly, and not inferentially, or by way of recital.” *Schneiderman*, 102 F.  
 10 Supp. at 91-92 (citation omitted); *see also United States v. Cecil*, 608 F.2d 1294, 1297  
 11 (9th Cir. 1979) (“The requirement that an indictment contain a few basic factual  
 12 allegations accords defendants adequate notice of the charges against them and  
 13 assured them that their prosecution will proceed on the basis of facts presented to the  
 14 grand jury. Such a requirement is neither burdensome nor unfair to the prosecuting  
 15 authorities.”). Without a direct allegation that Singh acted willfully in violation of a  
 16 known legal duty, Count 3 cannot stand.

17 **B. The Court Must Dismiss Counts 19 and 24 For Failing to State an**  
 18 **Offense**

19 Counts 19 and 24 allege that Singh:

20 [D]id knowingly alter, conceal, cover up, falsify and make a false entry  
 21 into a record and document with the intent to impede, obstruct and  
 22 influence the investigation and proper administration of matters within  
 23 the jurisdiction of the Federal Bureau of Investigation – to wit, by  
 concealing and covering up . . . the fact that [Azano] was the true source  
 of the . . . campaign donations and contributions . . . in violation of [18  
 U.S.C. § 1519].<sup>3</sup>

24 <sup>3</sup> 18 U.S.C. § 1519 states:

25 Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or  
 26 makes a false entry in any record, document, or tangible object with the intent  
 27 to impede, obstruct, or influence the investigation or proper administration of  
 28 any matter within the jurisdiction of any department or agency of the United  
 States or any case filed under title 11, or in relation to or contemplation of any

Indictment ¶ 31. These Counts should be dismissed for two reasons. First, the Government's position criminalizes innocent conduct. More specifically, it punishes an individual for abstaining from an action which he had no legal duty to perform. Second, it is not sufficiently alleged that Singh acted with the intent to impede a federal investigation.

**1. Singh Did Not Act in Violation of 18 U.S.C. § 1519**

The Government's position encourages a disturbingly broad reading of Section 1519. The position is, ostensibly, that a person can be punished for not disclosing, in a "record, document, or tangible object," donations which he or she had no legal duty to disclose.

The Indictment details for each alleged contribution, under a column titled "Contribution Falsely Represented To Be Made By," the contribution amount and the alleged "false" donor. Importantly, the Counts alleging an "unlawful" act by Singh only state that the donations were "unreported." *See* Indictment Counts 19, 24. Because Singh did not author any records or falsify any documents, the Indictment merely maintains that Singh did not report campaign contributions. However, the applicable campaign finance laws for Candidate 1 and Candidate 3, both of whom ran for San Diego mayor, require the candidate or committee—and not the contributor—to disclose contributions. *See* San Diego Municipal Code § 27.2901 et seq.; *see also* *FEC v. Toledano*, 317 F.3d 939 (9th Cir. 2002). Indeed, the Indictment does not even allege Singh's knowledge as to what disclosures were ever made.

Here, the Indictment does not allege that Singh knowingly destroyed any records, or knowingly authored any false documents. Rather, the Government merely alleges that Singh concealed, by virtue of his failure to affirmatively disclose in a filed record, that Azano was the true source of campaign donations and contributions. Such

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such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

disclosures, however, were never Singh's duty and, indeed, were never undertaken by Singh.

Therefore, as Singh did not author any documents, did not falsify any documents, and did not have a duty to author or submit any documents relating to the alleged campaign contributions, he cannot be charged with a knowing violation of 18 U.S.C. § 1519.

## 2. Singh Did Not Act with the Intent to Impede a Federal Investigation

The Government fails to allege facts that Singh did anything with the intent to impede a federal investigation. As the Eighth Circuit observed in *United States v. Yielding*:

[18 U.S.C. § 1519] does not impose liability for 'knowingly . . . destroy[ing] . . . any . . . document . . . in . . . contemplation of any [federal] matter,' *without* an intent to impede, obstruct, or influence a matter. If it did, then the statute would forbid innocent conduct such as routine destruction of documents that a person consciously and in good faith determines are irrelevant to a foreseeable federal matter.

657 F.3d 688, 711 (8th Cir. 2011) (emphasis in original). Stated otherwise, under Section 1519, is not enough for a defendant to merely act with knowledge of his literal actions; rather, he must also, at the same time, act with the intent to impede a federal investigation, or in consideration of a federal matter. *Id.*; see also *United States v. Hunt*, 526 F.3d 739, 743 (11th Cir. 2008). Moreover, as noted in *Schneiderman*, where the court was considering an indictment alleging a violation of the Smith Act, "it is not enough to charge that [the activity was undertaken] with intent to violate the law. That would be a mere conclusion. The facts must be set forth, so that the court can determine, and not the pleader, whether or not they constitute the crime." 102 F. Supp. at 95 (citation omitted). Thus, for an indictment to state a violation of Section 1519, it must allege that the defendant knowingly acted with an intent to impede a



1 federal investigation, *and* must allege facts sufficient for the court to determine  
2 whether the defendant's actions, as alleged, constitute a crime.

3 Here, it is merely alleged that Singh failed to report contributions which he had  
4 no legal duty to report. Accordingly, the Indictment fails to allege that Singh acted  
5 with the requisite intent to impede a federal investigation. In an apparent attempt to  
6 obscure the inadequacy of the Indictment in this regard, there is a rote recitation of a  
7 conclusion of law—specifically, that Singh acted “with the intent to impede, obstruct  
8 and influence the investigation and proper administration of matters within the  
9 jurisdiction of the Federal Bureau of Investigation.” Indictment ¶ 31. Such conclusory  
10 language is insufficient to state an offense. *See Schneiderman*, 102 F. Supp. at 92  
11 (“[F]acts are to be stated, not conclusions of law alone.”) (quoting *United States v.*  
12 *Cruikshank*, 92 U.S. 542 (1875)); *see also United States v. Peel*, No. 2:14-cr-00106-  
13 GEB, 2014 WL 3057523 (E.D. Cal. July 7, 2014) (stating an offense must be  
14 accompanied by a statement of the facts and circumstances that will inform the  
15 accused of the specific offense) (citation omitted).

16 Because Singh did not falsify any documents, had no legal duty to disclose any  
17 campaign contributions and because the Indictment failed to sufficiently allege that  
18 Singh acted with the intent to impede a federal investigation, the Court must dismiss  
19 Counts 19 and 24 of the Indictment.

### 20 **C. The Court Must Dismiss Count 1 For Failure to State an Offense**

21 Count 1 alleges that Singh “did knowingly conspire together with others . . . to  
22 commit offenses against the United States,” including violations of 2 U.S.C. §§  
23 437g(d)(1)(A) and 441e(a)(1)(A) and 18 U.S.C. § 1519. Indictment ¶ 20. It is the  
24 duty of the court “to carefully scrutinize indictments under the broad language of the  
25 conspiracy statute ‘because of the possibility, inherent in a criminal conspiracy  
26 charge, that its wide net may ensnare the innocent as well as the guilty.’” *United*  
27 *States v. Cogswell*, 637 F.Supp. 295, 299 (N.D. Cal. 1985) (citation omitted).

1 First, because the conduct alleged in the Indictment does not constitute a  
 2 violation of any campaign finance law, the alleged agreement to do those acts cannot  
 3 constitute a conspiracy to violate those statutes. *Cogswell*, 637 F.Supp. at 299.  
 4 Specifically, the allegations in the Indictment do not establish that Singh possessed the  
 5 requisite mens rea to violate 2 U.S.C. §§ 437g(d)(1)(A) and 441e(a)(1)(A). Similarly,  
 6 it is not alleged that Singh authored any documents, falsified any documents, nor had  
 7 a duty to author or submit any documents relating to the alleged campaign. Therefore  
 8 the allegations in the Indictment cannot constitute a violation of 18 U.S.C. § 1519.  
 9 Accordingly, the conspiracy to commit these offenses fails because no substantive  
 10 offense could have been committed under the facts alleged.

11 Second, even if it were to be found that there were sufficient facts alleged in the  
 12 Indictment to constitute a violation of the substantive statutes, to violate the federal  
 13 conspiracy statute, the defendant must have become a member of a conspiracy  
 14 knowing of at least one of its objects and intending to help accomplish it. *See* 18  
 15 U.S.C. § 371. “A conspirator must intend to further an endeavor which, if completed,  
 16 would satisfy all of the elements of a substantive criminal offense, but it suffices that  
 17 he adopt the goal of furthering or facilitating the criminal endeavor.” *Salinas v.*  
 18 *United States*, 522 U.S. 52, 65 (1997). “Proof of the defendant’s connection to the  
 19 conspiracy requires a showing that the defendant knew of the existence of the  
 20 conspiracy and acted with the intent to further its goals.” *United States v. Esparza*,  
 21 876 F.2d 1390 (9th Cir. 1989); *see also Manual of Model Criminal Jury Instructions*  
 22 *for the Ninth Circuit* § 8.20 (2010).

23 As previously discussed above, the Indictment fails to allege that Singh: (1)  
 24 knew of Azano’s status as a foreign national; (2) knew of his legal duty pursuant to 2  
 25 U.S.C. §§ 437g and 441e, and (3) knew of the campaign’s failure to report specific  
 26 campaign contributions. Without sufficiently alleging that Singh had this requisite  
 27 knowledge—knowledge of the very object of the alleged conspiratorial agreements—  
 28



1 it is legally impossible that Singh knowingly joined any conspiracy with the intent to  
 2 further its objectives. For these reasons, Count 1 of the Indictment should be  
 3 dismissed.

4 **D. The Court Must Dismiss Count 25 For Failure to State an Offense**

5 Count 25 alleges Singh “did directly and indirectly corruptly give, offer and  
 6 promise a thing of value to a public official with the intent to influence an official to  
 7 act and to induce that public official to act in violation of his lawful duties.”  
 8 Indictment ¶ 32. The Indictment further accuses Singh of “offering and giving \$1,000  
 9 to a federal official in exchange for confidential and classified information; all in  
 10 violation of Title 18, United States Code, Section 201(b), and Title 18, United States  
 11 Code, Section 2.” *Id.*

12 The object of an indictment is twofold: first, the indictment must “furnish the  
 13 accused with such a description of the charge against him as will enable him to make  
 14 his defense, and avail himself of his conviction or acquittal for protection against a  
 15 further prosecution for the same cause;” and second, the indictment must “inform the  
 16 court of the facts alleged, so that it may decide whether they are sufficient in law to  
 17 support a conviction, if one should be had.” *Schneiderman*, 102 F. Supp. at 91-92.  
 18 “For this, facts are to be stated, not conclusions of law alone. A crime is made up of  
 19 acts and intent; and these must be set forth in the indictment, with reasonable  
 20 particularity of time, place and circumstances.” *Id.* (quoting *United States v.*  
 21 *Cruikshank*, 92 U.S. 542 (1875)); *see also United States v. Buddenberg*, No. CR-09-  
 22 00263 RMW, 2010 WL 2735547 (N.D. Cal. July 12, 2010) (holding an indictment to  
 23 be deficient for not containing facts and circumstances in support of the offense  
 24 charged).

25 This Count contains a bare conclusion of law alone, which achieves neither of  
 26 the two objectives for an indictment. This Count must be dismissed, because it fails to  
 27 ensure that Singh was prosecuted only on the facts presented to the grand jury. *See*  
 28

1 *United States v. Du Bo*, 186 F.3d 1177 (9th Cir. 1999). Failing to enforce this  
 2 requirement would allow a court to “guess what was in the minds of the grand jury at  
 3 the time they returned the indictment . . . .” *Id.* at 1179 (citation omitted). As the court  
 4 analogized in *United States v. Cruikshank*, “It is a crime to steal goods and chattels;  
 5 but an indictment would be bad that did not specify with some degree of certainty the  
 6 articles stolen. This, because the accused must be advised of the essential particulars  
 7 of the charge against him, and the court must be able to decide whether the property  
 8 taken was such as was the subject of larceny.” 92 U.S. at 558.

9 So while bribery may be a crime, the Indictment must allege with particularity  
 10 the public official and the events surrounding the alleged bribery so as to inform Singh  
 11 of the essential facts of the charge against him. *See, e.g., Fontana v. United States*,  
 12 262 F. 283, 286 (8th Cir. 1919) (stating that “it is a fundamental rule that the  
 13 sufficiency of an indictment must be tested on the presumption that the defendant is  
 14 innocent of it and has no knowledge of the facts charged against him in the pleading”).

15 Importantly, an indictment must also provide sufficient factual support from  
 16 which the court would be able to determine whether the allegations, if proven true,  
 17 would constitute a federal offense. Because the present Indictment fails to sufficiently  
 18 inform Singh of the facts on which the Government based its charges and similarly  
 19 fails to inform the Court of facts sufficient to find a federal offense, Count 25 of the  
 20 Indictment should be dismissed.

## 21 **V. CONCLUSION**

22 For the foregoing reasons, Singh respectfully requests that the Court dismiss  
 23 Counts 1, 3, 19, 24 and 25 of the Indictment.

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25  
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